

UNITED STATES PATENT AND TRADEMARK OFFICE

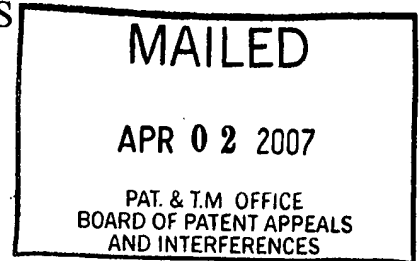
BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte MENNO ANNE TREFFERS
and ANTONIUS ADRIAAN MARIA STARING

Application 09/930,654

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on January 9, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.



A review of the file indicates that on May 12, 2006, appellants filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the Appeal Brief filed on May 12, 2006, does not fully comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) ***Evidence appendix.*** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) ***Related proceedings appendix.*** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed May 12, 2006:

- 1) "Evidence Appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and
- 2) "Related Proceedings Appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

While the Examiner did comment on the "Related Proceedings Appendix" in the Examiner's Answer of July 20, 2006, he did not comment on the "Evidence Appendix", and so the Appeal Brief filed May 12, 2006 is defective. It is required that either a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c) be filed by Appellant OR the Examiner fully complies with MPEP § 1205.03, with regards to when only a "Related Proceedings Appendix and Evidence Appendix" are missing in the Appeal Brief. For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

Accordingly, it is ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed on May 12, 2006, defective;
- 2) notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37 OR have the Examiner resolve the issue with a PTOL-90 that fully complies with MPEP § 1205.03, and;
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES



PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571)272-9797

PJN/pgc

cc: Stephen B. Salal
Harter, Secrest and Emory LLc
1600 Bausch & Lomb Plaza
Rochester, NY 14604